

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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JADA SPYRES,

Plaintiff,

v.

PRUCO LIFE INSURANCE COMPANY;
EDUARDO ZEITER; and DOES 1
through 10,

Defendants.

No. 2:21-cv-01147-WBS-AC

MEMORANDUM AND ORDER RE:
MOTION TO REMAND

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Plaintiff Jada Spyres ("plaintiff") brought this action against defendants Pruco Life Insurance Company ("Pruco") and Eduardo Zeiter because Pruco refused to pay plaintiff the \$1 million death benefit from a life insurance policy insuring her partner Zachary Ortiz ("decedent") after he died on March 23, 2019. (See Notice of Removal, Ex. A ("Compl.") (Docket No. 1).)¹

¹ On November 25, 2020, the parties filed a stipulation with the state court substituting Pruco Life Insurance Company for defendant Prudential Insurance Company of America. (See id.) Although plaintiff continues to refer to defendant Pruco as

1 The thrust of plaintiff's complaint is that Pruco
2 wrongfully rescinded the life insurance policy a year and a half
3 after decedent's death. (See id. at ¶ 2.) Pruco cited three
4 purported misrepresentations that the decedent allegedly made on
5 his life insurance application as the reason for its denial.
6 (See id.) Specifically, the decedent was asked in his
7 application for the policy whether he had ever: (1) taken
8 cocaine, to which he answered "no"; (2) been advised to have
9 treatment or counseling for alcohol or to reduce or eliminate its
10 usage, to which he stated "no"; and (3) been advised to have any
11 diagnostic procedures during the past five years, to which he
12 stated "no." (See id. at ¶¶ 17-24, 26-30.)

13 Plaintiff alleges that Pruco neglected to undertake the
14 investigation it was legally obligated to conduct before
15 rescinding a life insurance policy in California, and that if
16 Pruco had done so, it would have understood that no legal basis
17 existed to deny the claim and terminate the policy. (See id.)
18 Plaintiff further alleges that the application did not contain
19 any material misrepresentations under California law, and that
20 decedent never knew the true answers to the questions that
21 allegedly constituted material misrepresentations and did not
22 know that they would be contradicted by his medical record. (See
23 id. at ¶¶ 18-21.)

24 The complaint also alleges that the life insurance
25 policy was recommended and procured for decedent by Eduardo
26 Zeiter, a financial planner and licensed insurance broker. (See

27 Prudential, the court accepts the parties' stipulation and will
28 refer to this defendant as Pruco.

1 id. at ¶ 11.) An employee of Mr. Zeiter allegedly met with the
 2 decedent, completed the application for him, and then submitted
 3 it to Pruco. (See id. at ¶ 12.) Plaintiff contends that any
 4 false answers contained in decedent's application were the result
 5 of Mr. Zeiter's negligence in procuring the policy and completing
 6 the application on decedent's behalf. (See id. at ¶ 50.)

7 Plaintiff brought this action against Pruco and Mr.
 8 Zeiter in Yolo County Superior Court on October 7, 2020, claiming
 9 that the actions of Pruco constituted breach of the contractual
 10 duty to pay a covered insurance claim, breach of the duty of good
 11 faith and fair dealing, and violation of California Business and
 12 Professions Code, Sections 17200, et. seq., and that Mr. Zeiter
 13 is liable for professional negligence under California state law.
 14 (See generally Compl.) On June 3, 2021, Pruco removed the action
 15 to this court, pursuant to 28 U.S.C. § 1441(b), on the basis of
 16 diversity of citizenship under 28 U.S.C. § 1332(a). (See Notice
 17 of Removal at 1 (Docket No. 1).)² Plaintiff now moves to remand
 18 this action to the state court upon the ground that complete
 19 diversity of citizenship is defeated by virtue of the fact that
 20 both plaintiff and defendant Zeiter are citizens of California.
 21 (See Mot. to Remand (Docket No. 4).)

22 I. Legal Standard

23
 24 ² Pruco contends that consent to removal by Mr. Zeiter is
 25 not needed because he was fraudulently joined. See Emrich v.
 26 Touche Ross & Co., 846 F.2d 1190, 1193 n. 1 (9th Cir. 1988)
 27 ("Nominal, unknown, or fraudulently joined defendants are exempt
 28 from the general rule, and do not need to consent to a
 removal."). Nevertheless, Mr. Zeiter has stated that he does not
 oppose the removal. (See Decl. of Thomas Worger in Supp. of
 Notice of Removal ("Worger Decl.") ¶ 6 (Docket No. 1-1).)

1 “[A]ny civil action brought in a State court of which
2 the district courts of the United States have original
3 jurisdiction, may be removed by the defendant or the defendants,
4 to the district court of the United States for the district . . .
5 where such action is pending.” 28 U.S.C. § 1441(a). However, if
6 “it appears that the district court lacks subject matter
7 jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).

8 Federal courts have original jurisdiction over cases
9 where complete diversity exists between the parties and the
10 amount in controversy exceeds \$75,000, exclusive of interest and
11 costs.³ 28 U.S.C. § 1332(a). To satisfy the requirements for
12 complete diversity, “each of the plaintiffs must be a citizen of
13 a different state than each of the defendants.” Morris v.
14 Princess Cruises, Inc., 236 F.3d 1061, 1067 (9th Cir. 2001)
15 (citing Caterpillar Inc. v. Lewis, 519 U.S. 61, 68 (1996)).
16 Pruco is incorporated in Arizona and has its principal place of
17 business in New Jersey. (See Notice of Removal at ¶ 13.)
18 Plaintiff is a citizen of California who is domiciled in the
19 County of Yolo, California and was so domiciled at the time of
20 filing the complaint. (See id. at ¶ 12.) Defendant Zeiter is a
21 citizen of California working as an insurance broker licensed in
22 California to sell life insurance. (See Compl. at ¶ 6.)⁴

23 ³ The parties do not dispute that the amount in
24 controversy exceeds \$75,000 exclusive of interest and costs.
25 (See Notice of Removal at ¶ 31-33; Compl. p. 12. ¶ a (seeking the
26 death benefit due under the life insurance policy, which is
 \$1,000,000, plus interest).)

27 ⁴ For the purposes of determining diversity for
28 jurisdictional purposes, “the citizenship of defendants sued
 under fictitious names shall be disregarded.” 28 U.S.C. §

1 II. Fraudulent Joinder

2 Pruco argues that Zeiter was fraudulently joined as a
3 defendant and that there is therefore complete diversity between
4 plaintiff and Pruco. (See Notice of Removal at ¶ 16.) Joinder
5 of a non-diverse defendant is deemed fraudulent, and the
6 defendant's presence in the lawsuit is ignored for purposes of
7 determining diversity, where "there is no possibility that the
8 plaintiff could prevail on any cause of action it brought against
9 the non-diverse defendant." Padilla v. AT& T Corp., 697 F. Supp.
10 2d 1156, 1159 (C.D. Cal. 2009); see also Macey v. Allstate Prop.
11 and Cas. Ins. Co., 220 F. Supp. 2d 1116, 1117 (N.D. Cal. 2002)
12 (remand is permissible only where "there is a non-fanciful
13 possibility that plaintiff can state a claim under California law
14 against the non-diverse defendants").

15 While the test for fraudulent joinder resembles an
16 analysis under Federal Rule of Civil Procedure 12(b)(6) in that
17 the court "accepts non-conclusory factual allegation in the
18 complaint as true and does not consider the merits of the
19 defenses (other than procedural bars) claimed by the resident
20 defendant, the [c]ourt's inquiry is broader than under Rule
21 12(b)(6)." TPS Utilicom Servs. Inc., v. AT & T Corp., 223 F.
22 Supp. 3d 1089, 1102 (C.D. Cal. 2002). "The defendant seeking
23 removal to the federal court is entitled to present the facts
24 showing the joinder to be fraudulent." Id. When determining
25 whether joinder is fraudulent, "[t]he court may pierce the
26 pleadings, consider the entire record, and determine the basis of

27
28 1441(b)(1).

joinder by any means available.” Maffei v. Allstate Cal. Ins. Co., 412 F. Supp. 2d 1049, 1053 (E.D. Cal. 2006) (Burrell, J.).

“There is a presumption against finding fraudulent joinder, and defendants who assert that plaintiff has fraudulently joined a party carry a heavy burden of persuasion.” Plute v. Roadway Package Sys., Inc., 141 F. Supp. 2d 1005, 1008 (N.D. Cal. 2001). In determining whether a defendant was joined fraudulently, the court must resolve “all disputed questions of fact and all ambiguities in the controlling state law in favor of the non-removing party.” Id. (internal citations omitted). “Remand must be granted unless the defendant shows that the plaintiff would not be afforded leave to amend his complaint to cure the purported deficiency.” See Padilla, 697 F. Supp. 2d at 1159. Fraudulent joinder will be found when supported by “clear and convincing evidence.” Walker v. Aetna Health & Life Ins. Co., Case No. 1:21-cv-00156-AWI-BAM, 2021 WL 2661449, *5 (E.D. Cal. June 29, 2021).

Plaintiff’s sole cause of action against defendant Zeiter in the complaint is for “Professional Negligence”. (See Compl. at ¶¶ 49-56.) The elements of a cause of action for professional negligence are: (1) the duty of the professional to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise; (2) breach of that duty; (3) a causal connection between the negligent conduct and the result injury; and (4) actual loss or damages resulting from the professional negligence. See Loube v. Loube, 64 Cal. App. 4th 421, 429 (1st Dist. 1998). “[I]t is not enough to show that the defendant breached a duty owed to the client; the client also

1 must demonstrate that the breach of that duty caused actual loss
2 or damages.” Id. at 425.

3 In California, an insurance broker owes a duty of care
4 in procuring the coverage requested by the client. See
5 Fitzpatrick v. Hayes, 57 Cal. App. 4th 916, 922 (1st Dist. 1997).
6 Ordinarily, an insurance agent assumes only those duties found in
7 any agency relationship such as “reasonable care, diligence, and
8 judgment in procuring the insurance requested by the insured.”
9 Paper Savers, Inc. v. Nacsa, 51 Cal. App. 4th 1090, 1095-96 (2d
10 Dist. 1996). However, a special duty may be created by express
11 agreement or by the agent holding himself out to be more than an
12 “ordinary agent.” See id. (internal citations omitted). An
13 insurance broker may breach a professional duty if he adds a
14 misrepresentation to an application without the knowledge of the
15 applicant. See Quiroz v. Valley Forge Ins. Co., No. C 05-2025
16 SBA, 2005 WL 1806366, at *7 (N.D. Cal. July 28, 2005) (broker
17 omitted information in final application without applicant’s
18 knowledge); Isch v. Nw. Mut. Life. Ins. Co., No. C-99-5257 WHO,
19 2000 WL 274193, at *3 (N.D. Cal. Mar. 6, 2000) (plaintiff stated
20 a claim by alleging that broker had applicant sign application
21 without being offered the chance to review contents).

22 District courts within California have also held that
23 plaintiffs may be able to state a claim for professional
24 negligence where a broker affirmatively advises an applicant to
25 omit certain information. See Hudgens v. N.Y. Life Ins. Co., No.
26 CV 08-08550-MMMR (RCx), 2009 WL 782312, at *4 (C.D. Cal. Mar. 17,
27 2009). However, “an insurer does not have the duty to
28 investigate the insured’s statements made in an insurance

1 application and to verify the accuracy of the representations"
2 because "it is the insured's duty to divulge fully all he or she
3 knows." Hartford Cas. Ins. Co. v. Fireman's Fund Ins. Co., 220
4 F. Supp. 3d 1008, 1019 (N.D. Cal. 2016) (citing Am. Way Cellular,
5 Inc. v. Travelers Prop. Cas. Co. of Am., 216 Cal. App. 4th 1040,
6 1051 (2d Dist. 2013)).

7 Under the allegations of plaintiff's complaint as it
8 stands, it does not appear that the element of breach of duty is
9 adequately alleged in plaintiff's her professional negligence
10 claim against Zeiter. The complaint alleges that the decedent
11 did not know the truth of the answers given in the policy
12 application that constituted allegedly material
13 misrepresentations. (See Compl. at ¶¶ 19-21.) Thus, it does not
14 appear how anything Zeiter or his staff could have advised or
15 explained to him would have prevented decedent from making the
16 allegedly false statements.

17 Nor does the complaint contain any allegation that
18 Zeiter added a misrepresentation to the decedent's application
19 without his knowledge or affirmatively advised him to omit
20 certain information. Indeed, Zeiter testified in his deposition
21 that he never instructed any applicant or his coworkers to answer
22 applications untruthfully, and he would not submit an application
23 to an insurer if he knew the answer to any question to be false.
24 (See Decl. of Laura L. Geist in Opp'n to Mot. to Remand, Ex. A at
25 88:2-89:10 ("Geist Decl.") (Docket No. 7-2).) The decedent was
26 given multiple opportunities to provide correct answers in his
27 application. (See Opp'n to Mot. to Remand at 11 (Docket No. 7).)
28 The decedent reviewed the application on the phone with a third

1 party examiner and gave the same answers (see Geist Decl. at Ex.
2 C), and signed the application stating that the statements in the
3 application were complete, true, and correctly recorded. (See
4 Compl. at Ex. B.)

5 Nevertheless, the court cannot say at this stage of the
6 proceedings that there is no set of facts consistent with the
7 complaint under which Zeiter could be held liable for
8 professional negligence. While not alleged in the complaint,
9 plaintiff now claims that Zeiter or his staff told the decedent
10 "not to stress too much" if he could not recall his medical
11 history and/or the answers to the questions on his application,
12 because Pruco would request his medical records and verify the
13 information during the application process.

14 If plaintiff were allowed to amend her complaint to
15 allege that Zeiter or his staff affirmatively dissuaded the
16 decedent from looking further into his own medical history,
17 through this or similar statements, plaintiff could conceivably
18 state a claim against Zeiter. While it is true that Zeiter had
19 no "duty to investigate" whether decedent was concealing or
20 forgetting material information, see Hartford Cas., 220 F. Supp.
21 3d at 1019, encouraging an applicant to provide answers that the
22 applicant does not know to be true potentially could constitute a
23 breach of Zeiter's duty to the decedent.

24 Similarly, while the operative complaint may not
25 adequately allege that Zeiter's purported negligence caused
26 plaintiff's injury, the court cannot say that there is no set of
27 facts consistent with the complaint which does properly allege
28 causation. Given the complaint's allegation that the decedent

1 did not know about the information he omitted from his
2 application such as past cocaine use, it seems unlikely that
3 anything different would have happened if Zeiter or his employees
4 had given decedent further or stronger admonishments, but it is
5 conceivable that had such admonitions been given, or if Zeiter or
6 his staff had not told the decedent not to worry about his
7 answers, the decedent would have requested his medical records
8 before completing the application, would have asked his medical
9 providers about these questions, or would have asked Pruco or
10 Zeiter to request the records for him before answering no to the
11 three questions at issue in this case. Such scenario is not
12 inconsistent with the allegations of the complaint that Zeiter
13 "failed to properly . . . explain the application and adequately
14 advise what information might or might not be material to
15 Prudential." (See Compl. ¶ 54.)


16 Because it appears that plaintiff could amend her
17 complaint to state a claim against Zeiter, defendants have not
18 met their burden of showing that he was fraudulently joined.
19 Accordingly, Zeiter's California citizenship destroys the
20 complete diversity required for diversity jurisdiction, see
21 Walker, 2021 WL 2661449, at *7, and the court will grant the
22 motion to remand.⁵

23 IT IS THEREFORE ORDERED that the plaintiff's motion to
24 remand (Docket No. 4), be, and the same hereby is, GRANTED. This
25 case is REMANDED to the Superior Court of California, in and for

26 ⁵ Because the court finds that defendant Zeiter was not
27 fraudulently joined, the court does not address plaintiff's
28 contention that the removal was untimely or that Zeiter's joinder
was compulsory under California law.

1 the County of Yolo. The Clerk of this Court shall forward a copy
2 of this Order to the Clerk of the Superior Court of California,
3 in and for the County of Yolo.

4
5 Dated: September 13, 2021


WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE